SUPERIOR COURT OF ARIZONA MARICOPA COUNTY

LC2005-000926-001 DT

03/23/2006

COMM. EARTHA K. WASHINGTON

CLERK OF THE COURT
L. Rasmussen
Deputy

FILED: 03/24/2006

STATE OF ARIZONA JAMES D NEUGEBAUER

v.

THOMAS V SAVOCA (001) THOMAS V SAVOCA

701 W DEER VALLEY RD STE 6

PHOENIX AZ 85027

REMAND DESK-LCA-CCC SCOTTSDALE CITY COURT

RECORD APPEAL RULE / REMAND

Lower Court Case No. PR200524239

This appeal previously assigned to Judge Margaret H. Downie, was reassigned to Commissioner Eartha K. Washington for determination.

This Court has jurisdiction over this appeal pursuant to the Arizona Constitution, Article VI, Section 16, and A.R.S. § 12-124(A). The court has considered the record of the proceedings from the trial court, exhibits made of record, and the memoranda submitted.

On May 5, 2005, a car registered to Thomas Savoca, the appellant, was photographed at the intersection of Shea Boulevard and 90th Street in Scottsdale traveling 12 miles above the posted speed limit. A complaint was filed in the Scottsdale Municipal Court on May 12, 2005, and an arraignment was scheduled on June 15, 2005. On the arraignment date, the appellant failed to appear, and a request for personal service was made on July 14, 2005. The court scheduled another arraignment for August 18, 2005. On August 9, 2005, a process server went to the appellant's residence and served copies of the summons and complaint upon a woman identified by the name of Sally. In his affidavit of service, the process server indicates that Sally identified herself as the wife of the appellant. When the appellant failed to appear for the arraignment, a default judgment was entered against him on August 23, 2005. On September 7, 2005, the court records show that a pre-collection letter was sent to the appellant informing him

SUPERIOR COURT OF ARIZONA MARICOPA COUNTY

LC2005-000926-001 DT

03/23/2006

of the amount owed on the judgment. On September 12, 2005, the appellant called the court after apparently receiving the letter. On September 13, 2005, he filed a motion requesting the judgment be set aside. A hearing was held by the court in regard to the motion, and the appellant's request was denied.

Appellant, having filed a timely notice of appeal, brings the matter before this court.

This issue in this case is whether the lower court abused its discretion by denying the appellant's request to set aside the default judgment entered against him.

'To test whether a trial court has abused its discretion, we must determine not whether we might so have acted under the circumstances, but whether the lower court exceeded the bounds of reason by performing the challenged act.' *Katz*, 192 Ariz. at 83, 961 P.2d at 1031. 'It is well established law in Arizona that appellate courts will not disturb the exercise of discretion of the trial court if it [sic] supported by any reasonable evidence.' *Peters v. M & O Constr., Inc.*, 119 Ariz. 34, 36, 579 P.2d. 72, 74 (App. 1978).

Maher v. Urman, 211 Ariz. 543, 124 P.3d 770, 776 (2005).

Rule 22 of the Rules of Procedure in Civil Traffic Violation Cases governs default judgments against defendants who fail to appear for scheduled hearings. By failing to appear, allegations in the complaints are deemed admitted, courts issue judgments in favor of the State, civil sanctions are imposed and judgments are reported to the Department of Transportation. Rule 23 allows the lower court to set aside a judgment "for good cause or any other reason necessary to prevent a manifest injustice."

At the hearing on the motion to set aside judgment, the appellant testified that he never received the copies of the summons and complaint on the day that it was served. He told the court that the woman identified as Sally by the process server was his ex-wife. He stated that Sally never gave him the paperwork. Appellant claimed that he received notice of the default on September 12, 2005. From the audio transcript provided by the lower court, it appears that the appellant did not reside at the residence. In his appellate memorandum, he alleges that had he had notice of the court dates, he would have appeared.

Notice is satisfied once the service of summons is complete. Arizona Rule of Civil Procedure, Rule 4.1(d) states the service is effected by delivering a copy of the summons and pleading to the individual personally "or by leaving copies thereof at that individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein." "(T)he purpose of process is [sic] give the party actual notice of the proceedings against him and that he is answerable to the claim. . (T)he policy of interpreting rule 4(d)(1) liberally only applies where actual notice has been received." Marks v. LaBerge, 146 Ariz. 12, 15, 703 P.2d 559, 562 (1985). "(P)arties to litigation who have notice of contemplated action and Docket Code 512

SUPERIOR COURT OF ARIZONA MARICOPA COUNTY

LC2005-000926-001 DT

03/23/2006

without sufficient excuse neglect to appear and protect their rights, cannot complain of any order of judgment rendered against them." Scott v. G.A.C. Finance Corporation, 107 Ariz. 304, 306, 486 P.2d 786,788 (1971).

The appellant's situation is different from the defendant's in G.A.C. "In G.A.C. Finance, our Supreme Court found valid service, even though the summons and complaint were served at a different address because the defendant was personally given the papers well in advance of the entry of default judgment." Marks v. LaBerge, 146 Ariz. 12, 15, 703 P.2d 559, 562 (1985). In this case, the appellant did not have actual notice of the matter until after he received the precollection letter the lower court sent out on September 7, 2005. Appellant immediately acted upon receipt of the letter and tried to remedy the judgment. His excuse that his ex-wife, who happened to be in the residence at the time of service, failed to give him copies of the summons and complaint appears sufficient. The lower court heard the appellant's explanation and still upheld the judgment against him. Appellant's motion to set aside should have been granted pursuant to Rule 23 of the Rules of Procedure in Civil Traffic Violation Cases.

IT IS ORDERED setting aside the default judgment entered by the Scottsdale Municipal Court.

IT IS FURTHER ORDERED remanding this matter to the Scottsdale Municipal Court for all further appropriate proceedings.